

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM # Children Residential Facilities: Psychotropic Medication (SB 238 and SB 484)

The California Department of Social Services (hereafter known as the Department) hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held on August 14, 2019, at the following address:

Office Building # 8  
744 P St. Room 103  
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only if attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you need a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on August 14, 2019.

Following the public hearing the Department may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. Except for nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at [CDSS Public Hearings for Proposed Regulations](http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CDSS-Regulation-Changes-In-Process-and-Completed-Regulations/Public-Hearing-Information) (<http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CDSS-Regulation-Changes-In-Process-and-Completed-Regulations/Public-Hearing-Information>). Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading at the address listed below. Following the public hearing, copies of the Final Statement of Reasons will be available at the following address:

CONTACT: California Department of Social Services  
Office of Regulations Development  
744 P. Street, MS 8-4-192  
Sacramento, CA 95814  
Tel: (916) 657-2856, Fax: (916) 654-3286  
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## CHAPTERS

Title 22, Division 6, Chapter 4 (Small Family Homes), Sections 83001 (Definitions), 83064 (Licensee Duties and Responsibilities), 83070 (Child's Records), 83072.1 (Discipline), and 83075 (Health Related Services); Chapter 5 (Group Homes), Sections 84001 (Definitions), 84044 (Inspection Authority of the Department or Licensing Agency), 84065 (Personnel Requirements), 84070 (Children's Records), 84072.1 (Discipline Policies and Procedures), and 84075 (Health Related Services); and Chapter 9.5 (Foster Family Homes), Sections 89201 (Definitions), 89370 (Children's Records), 89405 (Training Requirements), 89468 (Admission Procedures), and 89475.1 (Emergency Medical Assistance, Injections and Self-Administration of Medications).

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed regulations for Senate Bill (SB) 484 (Chapter 540, Statutes of 2015), and SB 238 (Chapter 534, Statutes of 2015), intend to provide parameters for effective medication management for use of psychotropic medications. As a result, licensed Children's Residential Facilities and Homes may begin to adopt alternative and less invasive treatment approaches rather than relying on psychotropic medication as the first-line or only treatment plan.

The concern over the use of psychotropic medications among children and youth has been well-documented in research journals and the mainstream media for more than a decade. The vast majority of research indicates that children placed in foster care are particularly vulnerable to being over-prescribed psychotropic medications.

Currently, more than half of the children in California group homes are taking powerful psychotropic medication. These psychotropic medications may be mishandled at facilities to control and suppress undesirable behavior of the child rather than develop a comprehensive treatment plan in these facilities.

These proposed regulations implement specific components of SB 484 by requiring facilities and homes to obtain and maintain information in the child's records regarding psychotropic medication including (1) a copy of any court order authorizing psychotropic medications; (2) a separate log for each medication; and (3) psychotropic medications shall only be used in accordance with the written directions of the prescribing physician and as authorized by the juvenile court. CDSS will annually inspect group homes and short-term residential therapeutic programs that appear to have levels of psychotropic medications utilization warranting additional review. In addition, CDSS concluded the requirements developed from this regulations package should be a best practice standard not exclusive to group homes. CDSS will use its broad authority to apply these same requirements to Small Family Homes and Foster Family Homes.

These proposed regulations integrate components of SB 238 in which CDSS develops and makes accessible training regarding the authorization, uses, risks, benefits, assistance with self-administration, oversight, and monitoring of psychotropic medications, trauma, and substance use disorder and mental health treatments for those children. The training will be required of certain individuals involved in the care

and oversight of children in foster care, including group home administrators and foster parents.

The benefit anticipated from the implementation of these proposed regulations is effective management and oversight of the use of psychotropic medication in licensed Children's Residential Facilities and Homes serving children in out of home placement.

The CDSS is proposing amendments to bring its children's residential regulations into conformity with the law and provide necessary clarification for providers who care for children in out of home placements.

The CDSS considered other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area and therefore, CDSS finds that these proposed regulations are compatible and consistent with and the intent of the Legislature in adopting SB 238 and SB 484, as well as with existing state regulations.

#### COST ESTIMATE

1. Costs or Savings to State Agencies: CDSS received BCP general funds in:  
FY 2016-17 - \$784,000; FY 2017-18 - \$718,000; FY 2018-19 - \$275,000;  
FY 2019-20 - \$275,000; \$100,000 ongoing.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in  
Accordance With Government Code Sections 17500 - 17630: N/A
3. Nondiscretionary Costs or Savings to Local Agencies: None
4. Federal Funding to State Agencies: CDSS received BCP federal funds in:  
FY 2016-17 - \$49,000; FY 2017-18 - \$49,000; FY 2018-19 - \$576,000;  
FY 2019-20 - \$576,000; \$49,000 ongoing.

#### LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

#### STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant statewide adverse economic impact that directly affects businesses, including the ability of California businesses to compete with businesses in other states.

## STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations.

## SMALL BUSINESS IMPACT STATEMENT

These regulations will impact group homes that operate as small businesses, however, complying with them will have little to no cost impact on these providers.

## STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed regulations will not create nor eliminate jobs in the State of California nor result in the creation nor elimination of existing businesses. However, the amendment of the proposed regulations does have the potential to create or expand jobs in the State of California. In December of 2015, San Jose Mercury News reported that Santa Clara County is now employing public health nurses dedicated solely to monitor children's psychotropic medication use due to this new legislation.

The new regulations will require foster parents and employees of all levels at residential facilities to receive initial and ongoing training on psychotropic medication as it relates to Welfare and Institutions Code section 16501.4(d). This will increase safe and appropriate utilization of these medications and lead to more positive outcomes for foster children.

## STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

## STATEMENT OF ALTERNATIVES CONSIDERED

CDSS considered alternative solutions for the proposed amendments derived from SB 484 on psychotropic medication. The Department consulted with stakeholders in the development process for these proposed regulations and no reasonable alternatives have been presented. While Health and Safety Code section 1507.6 only applied to group home facilities, CDSS has chosen to use its broad authority to apply these same requirements to include Children's Residential Facilities and Homes serving children. The combined efforts from statutory amendments of SB 484 and SB 238, as well as the efforts of a collaborative taskforce developed by DHCS and CDSS, Quality Improvement Project, ensure that legislation regarding psychotropic medication is revisited on an annual basis. In the future, there will be an abundance of opportunities for new regulations to be proposed that may prove equally as effective in implementing the statutory policy or other provision of law.

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective

in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Stakeholders were consulted during the development of these proposed regulations and no reasonable alternatives have been presented to CDSS for review.

#### AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Health and Safety Code sections 1507.6, 1530 and 1538.9. Subject regulations implement and make specific Health and Safety Code sections 1526.5, 1533, 1534, 1538, and 1538.9 and Welfare and Institutions Code sections 369.5, 739.5, and 16501.4.

#### CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

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